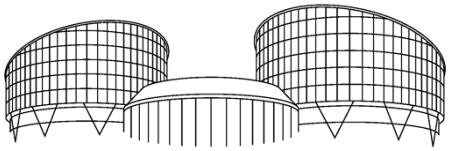

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MAMALADZE v. GEORGIA

(Application no. 9487/19)

JUDGMENT

Art 6 § 1 (criminal) • Obtaining and use of evidence (poisonous substance) in conviction of archpriest for preparation of murder of Patriarch's personal secretary, not contrary to fair trial requirements
Art 6 § 1 (criminal) • Public hearing • Exclusion of public • Trial and appeal proceedings held in camera • Trial court's failure, not remedied on appeal, to sufficiently consider less restrictive measures and impact of full closure • Detrimental effect of the trial in camera on public confidence in the proper administration of justice not counterbalanced
Art 6 § 2 • Breach of presumption of innocence through combination of public statements by public officials and prosecuting authorities, case-file material dissemination in the media, and unequal enforcement of non-disclosure obligation enabling main witness to make public accusations
Art 35 § 1 • Exhaustion of domestic remedies • Applicant not expected to pursue civil proceedings • Presumption of innocence complaint linked to alleged breach of publicity principle and operation of non-disclosure obligation as part of his criminal trial • Presumption of innocence viewed as a procedural guarantee within the context of the criminal trial itself

STRASBOURG

3 November 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mamaladze v. Georgia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O'Leary, President,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Lado Chanturia,
Mattias Guyomar,
Mykola Gnatovskyy, judges,
and Victor Soloveytchik, Section Registrar,

Having regard to:

the application (no. 9487/19) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Mr Giorgi Mamaladze ("the applicant"), on 31 January 2019;

the decision to give notice to the Georgian Government ("the Government") of the complaints under Article 6 §§ 1 and 2 and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 27 September 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present case concerns the alleged unfairness of the criminal proceedings against the applicant, the holding of the criminal trial in camera and an alleged violation of the right to the presumption of innocence. The applicant complained of a breach of his rights under Article 6 §§ 1 and 2 of the Convention.

THE FACTS

2. The applicant was born in 1984 and is detained in Tbilisi. He was represented by Mr D. Jandieri, a lawyer practising in Tbilisi.

3. The Government were represented by their Agent, Mr B. Dzamashvili of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. OPENING OF AN INVESTIGATION AGAINST THE APPLICANT

5. In January 2017 I.M., a journalist with personal ties to the applicant, informed two lawyers that the applicant – an archpriest and the director of a medical clinic operating under the authority of the Georgian Orthodox

Church, as well as a former director of the property management service of the Patriarchate of the Georgian Orthodox Church ("the Patriarchate") – had contacted him seeking "kalium cyanide" (a highly toxic substance, also known as potassium cyanide). I.M. told the lawyers that he believed a plan to murder someone working at the Patriarchate was underway. He indicated that the applicant had wanted to obtain the cyanide for a trip to Berlin, where he was intending to join the delegation accompanying the Catholicos-Patriarch of Georgia (the spiritual leader of the Georgian Orthodox Church), Ilia II ("the Patriarch") for the latter's medical procedures. One of the lawyers advised I.M. to record the content of his conversations with the applicant and to submit the evidence to the law-enforcement authorities.

6. On 2 February 2017 I.M., apparently accompanied by the two lawyers he had contacted earlier (see paragraph 5 above), appeared at the Chief Prosecutor's Office ("the CPO") and repeated what he had told the lawyers.

7. On the same day, the Patriarch's delegation left for Berlin.

8. On 3 February 2017 I.M. submitted various audio and video recordings to the investigating authorities, as well as screenshots of text message exchanges with the applicant and a small piece of paper containing the text "kalium cyanide" (later found by experts to have been written by the applicant and to have contained traces of his DNA), explaining that the applicant had written it down for him to avoid uttering the words out loud. I.M. also submitted screenshots of his communication with one of the lawyers. An investigation was opened. I.M. agreed to cooperate with the authorities and to continue recording his exchanges with the applicant.

9. On the same day, a judge authorised the implementation of covert investigative measures by I.M. Between 3 and 9 February 2017 the latter made various audio and video recordings and submitted them to the investigating authorities. Those recordings showed, among other things, different discussions involving the applicant's solicitation of cyanide and I.M.'s possible role in helping him obtain it, the price asked for by third parties in possession of cyanide and the applicant's willingness to provide the necessary sum of money, the applicant's enquiries regarding the poisonous properties and use of cyanide, the applicant's agreement to obtain natrium cyanide instead of the kalium cyanide he had initially sought as long as it had a similar toxicity, and the neutralising effect the consumption of sugar had on the toxicity of cyanide. I.M. and the applicant discussed the properties of "natrium cyanide" as opposed to "kalium cyanide" in the following terms:

> "[The applicant]: what if it does not have [any] effect? ...
>
> [I.M.]: No, it will have [an] effect ... This one can be used with water, you need to dissolve it in water
>
> [The applicant]: do you mean natrium?
>
> [I.M.]: yes, natrium ... together with water
>
> [The applicant]: what about this [kalium cyanide] one?

[I.M.]: this on food, on that, I just don't know, on whatever it is ...

[The applicant]: ... how long will it take him to deliver?

[I.M.]: ... he will deliver immediately ... should I ask him anything else?

[The applicant]: I just want a guarantee that it will be effective

[I.M.]: ... the most important [thing] is that it is not neutralised by sugar

[The applicant]: I know that sugar neutralises it

[I.M.]: if someone eats a lot of sugar or sweets ...

[The applicant]: as far as I know he/she [Georgian language has gender neutral pronouns] does not eat sweets, tries to stay away ...

[I.M.]: three thousand dollars and hand to hand. But does it not remain in the [body]?

[The applicant]: I don't know, why would I care? Let it remain. Who is going to find it?

[I.M.]: No one is going to find it now

[The applicant]: Maybe an expert ..."

I.M. and the applicant also discussed the applicant being in a rush (stating that he needed to obtain the substance "urgently") and his intention to take the cyanide to Germany where he was to join the Patriarch's delegation. The recordings also showed a discussion between I.M. and the applicant regarding the members of the delegation, including Sh.T. – the Patriarch's personal secretary (*მდივან-რეფერენტი*) (see paragraph 12 below) – and various reasons for the applicant's animosity towards her, including her influence within the Church. In one of the recordings I.M. and the applicant discussed the latter's future career path within the Patriarchate, including potentially being appointed to Sh.T.'s position. To I.M.'s question "what about [Sh.T.]?" the applicant replied using an idiomatic expression ("მარილზე გასვლა") implying death. In another conversation I.M. stated that Sh.T. had "managed" to be included in the Patriarch's delegation to Berlin and the applicant used another idiomatic expression implying that she should be killed ("*დასაბრედია*").

II. THE APPLICANT'S ARREST AND SEARCH MEASURES

10. On 9 February 2017 the applicant purchased flight tickets to Berlin.

11. According to official documents relating to the applicant's arrest and subsequent search, in the early hours of 10 February 2017, after the applicant had already checked in for his flight and was about to leave the airport building to board the aeroplane, he was apprehended by policemen and taken to the CPO. His checked luggage was seized and sealed, in the presence of airport security staff, in the airport baggage area. The luggage was unsealed and searched at the CPO at 4 p.m. that day in the presence of the applicant, his lawyer and an airport security staff member (who had apparently been

unable to attend the investigative measure at an earlier time), who had verified that the seal on the suitcase was intact. The applicant offered to help during the search and unlocked the suitcase using his own code. He took out some shoe cleaner and put it aside. One of the investigators asked him to open it. When the applicant removed the cap, a small container box dropped out and fell to the ground. The investigator picked it up and put it on the table. According to the applicant's version of events given to the trial court, both he and his lawyer touched the container, while the investigators' version and the account given by the airport staff member attending the search contested this, suggesting that only the investigator had touched the container when picking it up. The airport employee also stated that the applicant had asked his lawyer to leave the room once the container had fallen on the floor. Neither the applicant, his lawyer nor the investigators were wearing gloves. Inside the container was white powder, later found to have been "natrium cyanide". The applicant claimed that the container box did not belong to him. On the same day his apartment was searched and a gun and ammunition were seized. He stated that the gun had been given to him by I.M. for safekeeping. No fingerprint examination was carried out on the material seized from the applicant's luggage.

12. On 11 February 2017 the applicant was charged with "preparation of murder" for plotting to kill Sh.T. (see paragraph 9 above), as well as illegal purchase and possession of a firearm and ammunition. The latter charge was brought as a result of the search of his home.

13. On the same day, the CPO imposed a non-disclosure obligation upon the applicant and his lawyers pursuant to Article 104 of the Code of Criminal Procedure (see paragraph 54 below).

14. On 27 February 2017 the applicant was questioned. He confirmed the authenticity of the audio and video recordings containing his conversations with I.M. (see paragraph 9 above). However, he stated that his remarks had not implied Sh.T.'s assassination, and that he had used the relevant phrases to express his wish to end Sh.T.'s influence in the Patriarchate.

15. On 21 March 2017 the Tbilisi City Court dismissed an application by the applicant to have the internal and external airport surveillance camera footage retrieved in respect of the period between 5 and 10 a.m. on 10 February 2017. The court held that the application was not supported by the appropriate supporting documents and that, more importantly, no information had been indicated as to where the recordings – which were not kept by the airport – were to be retrieved from. On 28 March 2017 the appellate court upheld, in a final decision, the lower court's findings concerning the unsubstantiated nature of the application. It stated, among other things, that the applicant's request had been too general. In particular, given the importance of protecting the right to privacy of potential third parties, the court could not allow an application requesting the seizure of recordings covering the entire external and internal territory of the airport. It

was further noted that the applicant's suitcase had been seized and sealed in the presence of airport security staff.

III. PUBLIC STATEMENTS AND MEDIA COVERAGE RELATING TO THE CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

16. On 13 February 2017 the CPO made a statement regarding the applicant's arrest. It confirmed that the latter had been charged with preparation of murder and that investigative activities had commenced on 2 February 2017 on the basis of information received from a citizen who had feared that the applicant intended to murder "a person holding a high religious position". The CPO further stated that the investigation had revealed that the applicant "had requested [the individual concerned] to obtain the poisonous substance – cyanide" in exchange for money and potential favours in the future. The statement continued that the applicant "had intended to travel to Germany where the Patriarch and individuals accompanying [him] had gone for [the Patriarch's] treatment, and [that the applicant] had needed to obtain the poisonous substance before his own departure [for Germany]." It was further stated as follows:

> "Archpriest Giorgi Mamaladze [the applicant] ... had been, due to his professional engagements, in systematic contact with the Patriarch and [his] closest circle. The evidence collected at this stage of the investigation reveals that G. Mamaladze had been preparing the murder of one of the individuals and had, for this very purpose, purchased the poisonous substance ... from a person who has not yet been identified by the investigation. If [that substance] had been used, the criminal intent of the accused would have been implemented and the lethal result would have been unavoidable.
>
> On 10 February 2017 the staff of the CPO arrested the accused ... at Tbilisi International Airport before his departure for Germany, and the poisonous substance – "natrium cyanide" – was recovered as a result of the search of his luggage ...
>
> Based on the evidence obtained by the investigation, the CPO is working on several theories, and intensive investigative activities are ongoing in all directions ..."

17. On the same date, a special briefing on the matter was held by the Chief Prosecutor. He stated that "several theories [had] been identified based on the evidentiary material and [that] the investigation [was] ongoing." He further stated that "the questioning of witnesses and other investigative and security measures [were] still underway and [that] publicising information could damage [that process]." The Chief Prosecutor was asked whether it was the first time an attempt to poison the Patriarch had taken place. He answered that he had not said that the case at hand concerned the Patriarch.

18. On the same day, and following the Chief Prosecutor's briefing, several government officials commented on the matter. The Prime Minister of Georgia made the following statement:

> "First and foremost, I want to tell you that we were all spared from a serious tragedy; a crime against our country, a treacherous attack on the Church has been suppressed. I

> would like to point out that the law-enforcement bodies, who worked operatively, efficiently and without excess noise, have spared us from this great misfortune ... In view of these circumstances, I sent members of my personal guard to Berlin, together with the Chief of the Special [State] Protection Service, so that security measures on the ground could be strengthened. It is very important that the investigation be carried out professionally and [that it be] finished. It is important that, as confirmed by the doctors, the surgery went well and the Patriarch is feeling well. I wish him a speedy recovery and a long life for the good of our people and the country ..."

The Vice Prime Minister made the following statement:

> "The most serious crime has been averted. I believe that this was a well-thought-out plan conceived to be [fully] implemented. This would not have been solely an attack on the Church, solely on the Orthodox parish, this would have been an attack on the whole of Georgia, our institutions, the relevant services, the peace and calm of the country. However, [they] failed [in this plan]. I want to thank the relevant services, [but] let us wait for the investigation and other details [that] will become known in the near future. However, there is one thing I want to say, [and that is] that all those identified as guilty will be punished under the law in the strictest terms. The investigation is ongoing and we will know everything, but it is obvious that the specific individual, Mamaladze, was travelling to Germany with a specific poison when he was arrested."

The Minister of Justice stated that "a tragedy [had] been averted which would have caused the destabilisation not only of the Church but of the ... country and [which] would have been a national tragedy." She had added that "the Patriarch [was] already in safe hands ...".

19. On the same day, the applicant appears to have sent a letter to the Patriarchate alleging corruption in the Church. The content remained undisclosed but led to speculation in the media.

20. On 14 February 2017 the applicant complained to the CPO about the non-disclosure obligation and applied for it to be lifted at least in part in order that he could inform the public of his position at least regarding the information disseminated by the CPO on 13 February 2017.

21. On 14 February 2017 the Public Defender of Georgia (an independent body mandated by the Constitution and the Organic Law on the Public Defender to oversee the observance of human rights and fundamental freedoms in Georgia) stated, among other things, that the applicant's right to be presumed innocent had been breached. He also stated that he had met with the applicant, who had claimed that he had not been charged in relation to a person holding a high religious position. The Public Defender also stated that the CPO should have made more information public.

22. On 16 February 2017 the CPO made a statement that there had been various interpretations and much speculation as to who had been the alleged victim of the acts attributed to the applicant. The CPO further stated that its statement of 13 February 2017 had made it clear that the investigating authorities were working on several theories and that it would refrain from clarifying the matter and the identity of the possible victim in the interests of the proper conduct of the investigation.

23. On 20 February 2017 the applicant complained to the CPO that his right to the presumption of innocence had been violated on account of the imposition on him of the non-disclosure obligation, alleging that case-file material had been provided to the Patriarchate, and that the CPO had kept informing the public.

24. Between 20 February and 12 April 2017, the applicant's lawyers commented in various media outlets on certain aspects of the criminal case against the applicant. On 20 February 2017 it was announced that the applicant had been charged with "preparation of murder" in relation to Sh.T. and not the Patriarch. On 8 March 2017 the applicant's lawyer and I.M. advanced their versions in a talk show. I.M. accused the former of fabricating false theories to absolve the applicant of responsibility and influence the public opinion. On 8 and 13 March 2017 the applicant's lawyers discussed, briefly, the content of the applicant's statements given to the authorities. Among other things, it was mentioned that the victim had requested the applicant to obtain cyanide for goldsmiths' use. Similar information was revealed in other comments made by the applicant's lawyers on 10 and 12 April 2017.

25. On 27 February 2017 I.M. gave an interview to the media, stating that he did not believe the applicant had acted alone. He stated that the evidence in the case had been "reliable and difficult to listen to" and that the applicant and his lawyers had been aware of that fact but had, in his opinion, nevertheless tried to mislead the public. He indicated that it had been he himself who had suspected the applicant of plotting to kill the Patriarch, informing the CPO accordingly. He also reiterated that all the circumstances needed to be established by the investigation.

26. On 7 March 2017 the CPO responded to the applicant's applications of 14 and 20 February 2017, reiterating the importance of the non-disclosure obligation while the criminal investigation was actively ongoing. It refused to lift the obligation in order to preserve the interests of justice and the safety of the participants in the criminal proceedings.

27. On 8 March 2017 one of the prosecutors in the applicant's case held a press conference regarding the preliminary results of the investigation. He stated that more than thirty witnesses had been questioned and that over ninety investigative measures, including expert examinations, had been carried out. I.M. was named as the person who had informed the investigating authorities that the applicant had asked him to obtain cyanide. It was confirmed that he had provided the authorities with secret recordings of the relevant conversations with the applicant and a piece of paper on which the word cyanide had, according to I.M., been written by the applicant. The CPO also confirmed, for the first time, that the alleged victim had been Sh.T. (see paragraph 12 above). It further stated that the investigation had had doubts as regards the broader circle of victims, which had led to the Patriarch's protection being strengthened during his stay in Germany. With regard to

expert examinations carried out on the applicant's telephone and personal computer, the CPO stated, among other things, that "it has been established that Giorgi Mamaladze, for the purposes of murdering [the victim], attempted to obtain information on the Internet, via Google, regarding kalium cyanide". On the same day, a video lasting slightly under eighteen minutes was uploaded to the CPO's YouTube channel. It included conversations with the applicant recorded at different points in time by I.M. The video showed various conversations involving I.M. and the applicant (see paragraph 9 above). The recording then featured a dark background with text and a voice-over stating that the expert examination of the applicant's computer had revealed information about the webpages visited by him and information searched on the Internet concerning kalium and natrium cyanide, listing them one by one. A section of text message exchanges between the applicant and I.M. and apparently other individuals was also included in the publicised material.

28. On 10 March 2017 I.M. gave a thirty-eight-minute interview to a journalist. He reiterated, among other things, that the applicant had indeed asked for his help in obtaining cyanide, which he had found suspicious. He had decided to inform some lawyers of that request and his suspicions. As the lawyers had not believed him, he had then decided to record his exchanges with the applicant and to notify the law-enforcement authorities. I.M. then described his subsequent meetings with the applicant. He also stated that it had been his own suspicion, of which he had informed the CPO, that a high-level religious figure had been targeted. I.M. claimed to have been certain that the applicant had succeeded in acquiring the cyanide, even if he had not known where and how. He reiterated that the criminal investigation was ongoing and would determine what exactly had happened, including who the potential victim had been.

29. On 13 March 2017, after the applicant had finished giving his statement to the prosecution, which appears to have been made subject of intense speculations, the prosecutor made a statement claiming that the applicant's explanations had been "absurd". It was noted that the applicant had first claimed that the cyanide had been solicited on behalf of the victim for the use by goldsmiths. It was then allegedly claimed by the applicant that the victim had intended to commit suicide by the poisonous substance in question. The prosecutor also stated, as regards some phrases uttered by the applicant in the covert recordings, that the applicant had explained that he had been joking.

30. On 5 April 2017 the applicant complained about the non-disclosure obligation and of a violation of his right to the presumption of innocence on account of the CPO's publicising of various excerpts from the case file, including the secret recordings, accusing the CPO of attempting "to influence public opinion" and to portray him as guilty. Referring to some news segment, the applicant further alleged a violation of his right to the

presumption of innocence on account of various public statements made by government officials.

31. On 8 April 2017 the CPO reiterated its position regarding the non-disclosure obligation (see paragraph 26 above). As regards the dissemination of various material, it stated that it had merely informed the public, due to the heightened interest, of the developments in the case without prejudice to the interests of the investigation and the safety of the parties in the criminal proceedings.

32. On 3 October 2017 the CPO opened an investigation into allegations that information and material concerning the closed criminal trial had been leaked to the media. On 4 October 2017 the applicant's lawyers were summoned for questioning in this regard. No further information is available regarding that investigation.

IV. CLOSURE OF THE TRIAL AND THE APPLICANT'S CONVICTION

A. Closure of the trial proceedings

33. On 19 May 2017 the prosecutors in the applicant's case made an application to the Tbilisi City Court requesting that the trial be closed in order to protect the interests of justice, public morals, public order and privacy. They argued, among other things, that the case file had contained audio and video recordings and witness statements regarding the intimate details, personal life and moral qualities of religious figures, including the applicant. Discussion of such material publicly would result in a breach of the rights of the individuals concerned. Additionally, revealing such "categorically unacceptable, negative information" to the press and the public would, according to the prosecutor, risk causing "agitation in the public ... taking radical forms and threatening public order", considering that the majority of the Georgian population were Orthodox Christian. Making such information public was against public morals as the circumstances revealed by it were in stark contrast to the ethical standards associated with religious figures. The prosecutors also noted that the privacy of other witnesses (not holding religious positions) had to be protected. It was further argued that closure of the trial would enable the parties in the proceedings to participate fully and give statements without fear of having sensitive personal information made available to the public, who had otherwise expressed a keen interest in the case. It would also enable the trial court to deliberate on sensitive matters without pressure from the public and the media. The trial court was reminded of its obligations under Article 8 of the Convention.

34. As regards the interests of justice, the prosecutors argued that threats had been made against a witness and that a special protection measure had been applied in that regard. Additionally, the criminal investigation regarding the other individuals potentially involved in the case and the question of

where and how the applicant had acquired the poisonous substance was ongoing. The public nature of the trial would jeopardise those proceedings. The prosecutors' application referred to apparent breaches of the non-disclosure obligation by the applicant's lawyers in March 2017 by giving certain information to the public, and stated that that obligation alone, without the closure of the trial, had been ineffective in preventing the publicising of sensitive information concerning the case. The prosecutors further argued that given the nature of the sensitive information contained in the case file and the need to present the evidence to the witnesses during their questioning, closing the trial in part would not be effective to achieve the aims they had set out. The applicant, by contrast, would be able to fully participate in the proceedings, with full respect to the principles of an adversarial trial and equality of arms, without any evidence being withheld from him.

35. In reply, the applicant maintained that he wanted the trial to be public. He stated that the prosecutors' application lacked grounds and specific details as to whose protection they sought. As regards his personal life, the applicant stated that he had nothing to hide. He further argued that the excerpts of personal and intimate conversations available in the case file had nothing to do with the core of the case against him. The applicant stated that if the rights of some witnesses were alleged to be protected by the closure of the trial, his rights also necessitated protection – by holding a public hearing – in view of the accusatory statements made in respect of him and reference to the offence "averted" by his arrest. He stated, in this connection, that the main witness in the case had given unlimited and detailed information to the public, assuming the role of the investigating authorities, and that the Chief Prosecutor's Office had made numerous statements regarding him and had disseminated excerpts from the covert material available in the case file. In such circumstances and considering the non-disclosure obligation imposed on him and his lawyers, a clear need existed, according to him, to hold a public trial. The applicant also stated that if a fully public trial was considered impossible, a partial closure of the proceedings was possible in his case and would ensure the protection of the different interests of the parties in the proceedings.

36. On the same date, the judge allowed, in an open hearing, the prosecutor's application to close the trial. He took note of the applicant's arguments but found the prosecutors' application to be well-founded, stating that the constitutionally guaranteed right to privacy obliged the court to respect the private life of the multiple individuals, including the religious figures, relevant to the proceedings against the applicant. It was noted that consideration of such personal information in public proceedings would undermine public morals. The need to protect a witness and the ongoing criminal investigation regarding the threats made against that witness was further grounds for allowing the prosecutors' application. The trial court thus ordered the full closure of the proceedings.

B. Tbilisi City Court's judgment

37. On 5 September 2017 the Tbilisi City Court found the applicant guilty as charged (see paragraph 12 above) and sentenced him to nine years' imprisonment.

38. The court's 62-page judgment addressed various items of evidence available in the case file on a number of issues. This included more than eighty witness statements, numerous video and audio recordings and text messages, data retrieved from the applicant's laptop, and various expert reports and statements confirming the authenticity of the evidentiary material. Referring to this evidence, including the applicant's own statements reflected in the judicially authorised covert recordings and statements given to the court by various witnesses, the trial court established the applicant's animosity towards the victim of the crime with which he had been charged, noting that she had been perceived by him as standing in the way of his career advancement and influence in the Church. The court found that the audio and video recordings and text messages reflecting the applicant's interactions with I.M. (see paragraphs 9 and 27 above) and the data retrieved from the applicant's personal devices confirmed the following: the applicant had started to search for information concerning cyanide and its impact on the human body on the Internet at the end of 2016 and had found out that a goldmine operating in Georgia had been using the substance in its operations; he had contacted I.M. and asked for his help in obtaining cyanide; experts had confirmed that the paper which the applicant had given to I.M. with the inscription "cyanide" had contained the applicant's handwriting and genetic material; the applicant had initiated contact with I.M. voluntarily and had been very secretive during the whole process; the applicant and I.M. had been on friendly terms and on several occasions before the events in question the applicant had acted as I.M.'s secret source on various issues concerning the management of the Church and its property; the applicant had chosen I.M. because the latter's journalistic work had concerned, for a time, the operations of a goldmine and the applicant had assumed that I.M. would have connections to people with access to cyanide, which was used to extract gold. The trial court noted I.M.'s passive role in the exchanges with the applicant and the active solicitation of cyanide by the latter. The court also emphasised the following: the applicant had made frequent enquiries with I.M. regarding his request for help in obtaining cyanide; the applicant had only agreed to have natrium cyanide obtained instead of the kalium cyanide he had initially sought after becoming convinced, by having checked information on the Internet, that it had a similar toxicity and lethal impact on the human body; the applicant had sought information on how to use the two substances (and had found that natrium cyanide was to be dissolved in water while kalium cyanide had to be dissolved in food); the applicant had enquired regarding the neutralising effect the consumption of sugar had on the toxicity of the poison

and various witnesses had confirmed that Sh.T. generally avoided eating sugary foods; the applicant had asked I.M. for guarantees that he would obtain cyanide valid for use and had asked him about the likelihood of traces of it being found in an expert examination; the applicant had also expressed an interest in being appointed to Sh.T.'s position; his answer to I.M.'s question regarding Sh.T.'s fate had implied that she would be dead and on another occasion he had implied that she had to be killed; the applicant had been in a rush to obtain cyanide and had explicitly confirmed that he had intended to take the cyanide to Germany where he was to join the Patriarch's delegation. The trial court explained that the applicant had intended to poison the victim in Germany because he had wished to avoid cyanide being detected in her body as the passage of time, according to experts, would minimise or even exclude the chances of traces of it being detected.

39. The court also addressed, among other arguments, the applicant's submission that it had been the victim Sh.T. who had asked him to obtain the cyanide for goldsmiths' use, finding that account uncorroborated by the evidence available in the case file, including Sh.T.'s own statements and confirmation by goldsmiths explicitly ruling out any use of cyanide in their work. The court added that the level of secrecy and caution with which the applicant had solicited the cyanide, as well as other interactions on the matter revealed by various investigative measures (including his interest regarding the lethal uses of the poison), rendered the applicant's version unconvincing. The court further noted, as regards the applicant's submissions made throughout the proceedings that his version of events had kept changing based on the information provided by the prosecution and, in any event, had been contradictory and uncorroborated by witnesses and other evidence available in the case file.

40. Addressing the applicant's argument that the cyanide found in his suitcase had been planted, and that no fingerprint or other examination had been carried out on it, the court stated that the seizure, sealing and examination of the suitcase had been carried out in urgent circumstances, based on the information made available by the covert measures indicating that the applicant had purchased his ticket some hours before the flight. This had, according to the court, justified the implementation of the relevant measures without applying for a prior judicial authorisation to that end. These measures were subsequently declared lawful by a court and the defence had not appealed against any of the relevant judicial decisions. The court also considered, referring to witness statements given by the airport staff that the luggage could not have been tampered with after the applicant had checked it in at the airport. The trial court also noted that the lock on the suitcase and the seal subsequently put on it by the investigators had been intact, as confirmed by the neutral witness (airport staff member), and that the airport security X-ray had not had, as demonstrated by statements given by the airport's personnel, the capacity to detect the package in the applicant's

suitcase. As regards fingerprint and other expert examinations, the court stated that although the investigating and prosecuting authorities had deemed a fingerprint examination unnecessary, the applicant had been free to order one but had not done so. As to the question of where exactly the applicant had acquired the cyanide, the court stated that the inability to determine that element of the case did not render the applicant's trial unfair. It held that many drug or firearm-related offences had similar characteristics in that it was normally impossible to determine when or how the object of the offence had been obtained.

41. Having regard to the above considerations, the court concluded that the applicant had intended to poison Sh.T. and intentionally created conditions for committing murder, amounting to "preparation of murder" under the criminal law. As regards the second count relating to possession of a firearm and ammunition (see paragraph 12 above), the court explained that in accordance with domestic law and practice, possession, for whatever purpose, of firearms valid for use was sufficient for a conviction on that count.

42. As regards the holding of the proceedings in camera and the applicant's related objections, the Tbilisi City Court referred to Article 182 of the Code of Criminal Procedure and cited several grounds which had, in its opinion, justified the application of the impugned measure. It stated that the case file had contained "information regarding the personal life of the participants in the proceedings and other persons, the divulging of which would have breached their constitutionally protected right to respect for a private life" and such individuals' "public and private interests". Additionally, according to the court, the case file had also contained "personal, and frequently intimate, information regarding religious figures" and their discussion in a public hearing would, in the court's opinion, have "inflict[ed] significant damage on a large part of society, taking into account the religious belief of the majority of the Georgian population" and "the religious and moral principles established in society". The court further held that, according to the case file, a special protection measure had been applied in respect of certain participants in the proceedings and an investigation had been launched into threats made against one of the prosecution witnesses. These measures had created, in the court's opinion, a reasonable expectation that conducting the proceedings in public would jeopardise the life and health of the individuals concerned. The trial court concluded that "the protection of private life, individuals' safety and the moral and ethical norms established in society" had taken precedence over the interest of the publicity of the trial. In that regard, "the court emphasise[d] that the closure of the proceedings [had not had] an impact on the court and the fairness of the proceedings." It was noted that "the rights of the [applicant] provided for under the Constitution of Georgia, the European Convention on Human Rights and the Code of Criminal Procedure of Georgia had been fully respected and

implemented, [and that] the [applicant] and all six lawyers defending his interests had benefited from the [equality of arms] in the proceedings."

43. As concerns the imposition of the non-disclosure obligation on the applicant, the trial court held that it had been the investigating bodies' obligation to impose it in order to protect the legitimate interests of the investigating authorities not to risk divulging information regarding third parties' personal lives and jeopardising a separate criminal investigation (concerning the acquisition of cyanide). As regards the applicant's argument that the prosecution had been free to comment on the case in public, as opposed to the defence, the court noted that the defence had also made remarks on television and provided the public with its version of events. Additionally, the court held that it could not have been influenced by any statements outside the courtroom as its consideration of the applicant's case had been limited to the assessment of the evidence in an adversarial trial, with full respect to the principle of the equality of arms.

44. On 4 October 2017 the applicant lodged an appeal. He disagreed, extensively, with the first-instance court's finding of facts, assessment of the evidence, application of substantive and procedural criminal law, and the outcome of the proceedings, suggesting that his version of events had been more plausible. He also complained that he had been unable to challenge the authenticity of the evidence recovered from his luggage and to oppose its use, claiming that it had been planted at the airport; and that his right to the presumption of innocence and right to a public hearing had been violated, arguing that the grounds indicated by the trial court for holding the trial in private had not been apparent from the case file.

C. Publication of a report by the Public Defender of Georgia

45. On 15 November 2017, noting the heightened public interest in the applicant's case, the Public Defender of Georgia made available a report regarding the results of his monitoring of the applicant's trial. The document stated that representatives of his office had attended all the hearings held as part of the applicant's closed trial. The Public Defender criticised the decision to close the hearings, claiming that it had had a negative impact on public confidence in the proper administration of justice. While the case file had, according to the report, "contained some confidential material, the possibility of partially closing the trial had not been pursued." He further stated that the parties had been given equal opportunity to question witnesses and to make submissions and applications. The report was critical of the imposition and operation of the non-disclosure obligation, the full closure of the criminal trial and the statements made by the CPO and other public officials in the context of the applicant's right to be presumed innocent. It noted that in circumstances where the CPO had been disseminating various materials in the media and the main witness had been well known to the public, neither the need to

safeguard the investigation nor the aim of protecting the witness had justified the imposition of the non-disclosure obligation. As regards the domestic courts' refusal to order the retrieval of the video recordings of the airport's security cameras, the Public Defender considered the question of whether the applicant had had the poisonous substance in the suitcase as crucial to his conviction and assessed as "vague and unsubstantiated" the domestic courts' refusal to order the retrieval of such footage. The Public Defender stated that the video footage from the airport would have been an important piece of neutral evidence to either confirm or refute the applicant's allegation.

46. On the same date, the Public Defender's report was criticised as "incompetent and biased" by the prosecutor in the applicant's case, who reiterated the trial court's findings on a number of issues, including the need to close the proceedings, the unsubstantiated nature of the application requesting the retrieval of video footage and the presence of extensive reasoning in the trial court's judgment of conviction.

47. On 16 November 2017 the Tbilisi City Court issued a statement criticising the findings of the Public Defender. It held, among other things, that his report had gone beyond the remit of his office, interfered with the competence of the court and attempted to "misinform the public" by means of subjective opinions and populist statements. The report was also criticised on account of the fact that it had been a representative, rather than the Public Defender himself, who had attended the hearings.

D. Closure of the appellate proceedings

48. On 6 December 2017 the prosecutors requested that the appellate proceedings be held in camera. They largely repeated the content of the application lodged with the trial court (see paragraphs 33-34 above). They further claimed that one of the applicant's lawyers had received death threats and had had his car damaged. The investigation into the matter was ongoing. The prosecutors stated that publicising the proceedings posed the risk of further threats and violence against the participants in the criminal proceedings.

49. The applicant reiterated the majority of his arguments made before the trial court against holding the hearing in camera, including the possibility of closing the proceedings in part and those relating to the prosecuting authorities' dissemination of excerpts of the covert recordings between him and I.M., casting him in a negative light.

50. On the same day, the Tbilisi Court of Appeal allowed the prosecutors' application in an open hearing. The court stated that it did not share all the arguments presented by the prosecution but considered that the presence of personal information regarding mostly religious figures and the aim of protecting the personal safety of the participants in the proceedings necessitated holding the appellate proceedings in camera. As regards the

possibility of closing the proceedings in part, the judge held that because of the specific features of appellate proceedings, which mainly comprised opening and closing statements and the opposing parties' replies, it would be impossible to determine in advance which part of those statements should be public and which should not, closing and opening the trial based on those considerations. The appellate court allowed a representative of the Public Defender's Office to attend and monitor the closed hearing (it does not appear that the Public Defender published a report relating to the appellate proceedings).

E. Tbilisi Court of Appeal's judgment

51. On 13 February 2018 the Tbilisi Court of Appeal delivered a reasoned judgment. After reviewing multiple witness, expert and other evidence regarding various aspects of the case and the applicant's arguments in that regard, the court found the applicant's version of events contradictory and unsubstantiated, and upheld, in full, the lower court's judgment. As regards the allegation regarding the planting of evidence, the appellate court endorsed the lower court's findings (see paragraph 39 above). It was emphasised, among other things, that the applicant's luggage had been sealed in the presence of airport staff, who had later confirmed that no authority had tampered with it. As regards the lack of a fingerprint examination on the material found in the suitcase, it was noted that this element alone was not, given the presence of other corroborating evidence, sufficient to indicate that the evidence had been planted on the applicant. Had such an examination been carried out, the presence of fingerprints would then have been challenged by the applicant, who would have claimed that he had touched the material with his bare hands during the search of the suitcase. The appellate court also held that given the availability and sufficiency of multiple items of evidence confirming the applicant's guilt, the inability of the criminal investigation to determine where, when and how the applicant had obtained the cyanide did not undermine the findings of the lower court. No explicit answer was provided to the applicant's complaint regarding the alleged violation of the right to the presumption of innocence.

52. On 13 March 2018 the applicant lodged an appeal on points of law, arguing that the appellate court had inadequately addressed his complaints.

F. Supreme Court's decision

53. On 1 August 2018 the Supreme Court delivered a 30-page decision declaring the prosecutors' and the applicant's appeals on points of law inadmissible as manifestly ill-founded. The decision stated, without further elaboration, that no violation of the applicant's rights under Article 6 of the Convention, including the right to the presumption of innocence and the right to a public hearing, had taken place in the proceedings against him.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

54. The Code of Criminal Procedure provides, in so far as relevant, as follows:

Article 10 – Public and oral nature of a court hearing

"1. A court hearing, as a rule, shall be conducted publicly and orally. A hearing may be closed only where so provided for by this Code.

2. All decisions adopted by a court shall be pronounced publicly ..."

Article 104 – Non-disclosure of investigative information

"1. A prosecutor/investigator shall ensure that the information regarding the progress of an investigation is not made public. For this purpose, he or she may oblige a participant in the criminal proceedings not to disclose information available in the case file without his or her permission, and warn him or her of the criminal sanctions [for breaching that obligation].

2. In the interests of justice and of the parties [involved in the proceedings], a court may, at any stage of the investigation and judicial proceedings, on application by a party or on its own initiative, deliver a decision ordering the participants in [such] proceedings or persons in the courtroom to protect information related to the proceedings from being publicly circulated. Breach of such an order shall entail criminal liability under Georgian law."

Article 182 – Public nature of a court hearing

"1. A court hearing, as a rule, shall be conducted publicly and orally.

2. A court shall review material containing State secrets in camera.

3. A court may, on application by a party [to the proceedings] or on its own initiative, decide to close a hearing in whole or in part:

(a) in order to protect personal data, or professional or commercial secrets;

...

(c) in order to protect the personal safety of a participant in the proceedings and/or their family members (close relatives), or if a special protection measure is used in respect of a participant in the proceedings which necessitates the closure of the hearing;

...

(e) when a person whose personal correspondence or personal communications are to be produced in the trial does not agree [to the public disclosure of such information].

4. A judge may, on his or her initiative, close a trial in full or in part in order to keep order.

5. If deciding whether to close a hearing requires public discussion of circumstances which should not be made public, and the opposing party disagrees with the application to close the hearing, the matter shall be reviewed in a closed hearing ...

7. A court may oblige persons attending a closed hearing not to disclose information that they learned during that hearing ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

55. Relying on Article 6 §§ 1 and 2 of the Convention, the applicant complained that his criminal trial had been unfair on account of his inability to challenge the circumstances in which the evidence against him had been obtained; that the decision to hold the proceedings in camera and deny public access to his trial had been neither necessary nor proportionate; and that the prosecuting authorities' and other public officials' statements following his arrest, the dissemination in the media of various case-file material, including covert recordings, and the allegedly one-sided non-disclosure obligation imposed on him as part of the criminal proceedings had all contributed to his being portrayed as guilty, in breach of his right to be presumed innocent. Article 6 reads, in so far as relevant, as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law ..."

A. Admissibility

1. The parties' submissions

56. The Government submitted, with regard to the question of the presumption of innocence, that the applicant had failed to exhaust domestic remedies. In particular, they stated that criminal proceedings served the purpose of determining the guilt or innocence of an accused and could not serve as a forum for adjudicating claims with respect to Article 6 § 2 of the Convention. By contrast, civil defamation proceedings (see *Batiashvili*

v. Georgia, no. 8284/07, § 49, 10 October 2019) had been the more appropriate remedy. The Government submitted examples of domestic case-law relating to civil defamation proceedings in which the civil courts had found that statements accusing individuals of having committed crimes in the absence of a final conviction on the matter were defamatory. They additionally stated that the effectiveness of the civil-law remedy had already been confirmed by the Court in the cases of *Tuskia and Others v. Georgia* (no. 14237/07, § 91, 11 October 2018), *Batiashvili* (cited above, § 82) and *Kadagishvili v. Georgia* (no. 12391/06, § 138, 14 May 2020). The Government stated that such proceedings had never been instituted against the Chief Prosecutor's Office and that although they had been initiated against the then Prime Minister, the Vice Prime Minister and the Minister of Justice, they had eventually been discontinued following the applicant's own decision to withdraw his application.

57. Alternatively, and if the civil remedy were judged to be ineffective, the Government argued that the applicant had failed to comply with the six-month time-limit, which, in their view, had to be calculated from the date the impugned statements had been made and the contested material had been circulated in the media.

58. The applicant submitted that he had duly raised the complaint of a violation of his right to the presumption of innocence as part of the criminal trial against him. He had not therefore been obliged to institute and pursue separate civil proceedings on the matter. Additionally, he submitted that the civil-law remedy would not have been effective in so far as the imposition of the non-disclosure obligation was concerned. Accordingly, in his view, the rules concerning the exhaustion of domestic remedies and the time-limit under Article 35 § 1 of the Convention had been complied with in his case.

2. The Court's assessment

59. The Court reiterates that the purpose of the rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged before they are submitted to the Court. However, the only remedies to be exhausted are those that relate to the breaches alleged and that, at the same time, are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see *Konstas v. Greece*, no. 53466/07, § 28, 24 May 2011).

60. Furthermore, the rule must be applied with some degree of flexibility and without excessive formalism. It is neither absolute nor capable of being applied automatically. For the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, amongst other things, that the Court must take realistic

account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general context in which they operate, as well as the personal circumstances of the applicant (see *Akdivar and Others v. Turkey*, 16 September 1996, § 69, *Reports of Judgments and Decisions* 1996-IV, and *İlhan v. Turkey* [GC], no. 22277/93, § 59, ECHR 2000-VII; see also *Fatullayev v. Azerbaijan*, no. 40984/07, § 151, 22 April 2010).

61. According to the Court's established case-law, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 40, 19 February 2009, and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 25 June 2019).

62. Against this background, and as concerns the civil-law remedy, the Court's judgments delivered in respect of Georgia referred to by the Government (see paragraph 56 above) did not conclusively determine the effectiveness, in practice, of the impugned remedy. Rather, the Court emphasised the absence of any complaints made before the domestic authorities, whether civil or criminal in nature, regarding the alleged violation of the principle of the presumption of innocence in the particular cases before it (see *Tuskia and Others,* § 91, *Batiashvili*, § 82, and *Kadagishvili*, § 138, all cited above).

63. In the present case, the Court takes note of the examples of domestic case-law submitted to it by the Government to demonstrate the effectiveness of the civil-law remedy in the context of the right to the presumption of innocence. While these examples did not concern a situation identical to the applicant's, they demonstrated that civil defamation proceedings under Article 18 of the Civil Code could be instituted in respect of allegations pertaining to a breach of the right to the presumption of innocence. In this regard, the Court considers that a civil-law remedy may, in principle, be an effective way of addressing a complaint relating to allegedly prejudicial statements made in respect of ongoing criminal proceedings, either alone or in combination with a criminal-law remedy (see, for instance, *Marchiani v. France* (dec.), no. 30392/03, 27 May 2008; *Gutsanovi v. Bulgaria*, no. 34529/10, §§ 176-78, ECHR 2013 (extracts); *Ringwald v. Croatia* (dec.) [Committee], nos. 14590/15 and 25405/15, §§ 54-58, 22 January 2019; and *Januškevičienė v. Lithuania*, no. 69717/14, §§ 58-59, 3 September 2019). In the present case, the applicant did not allege that the civil-law remedy had been ineffective. Indeed, he instituted civil defamation proceedings against some of the public officials but later withdrew the application (see paragraph 56 above). By contrast, he maintained that he had exhausted another remedy which he had considered effective – the criminal proceedings against him – rendering the pursuit of the civil-law remedy redundant.

64. In this regard, the Court observes that the applicant's complaint under Article 6 § 2 of the Convention has three limbs. It thus relates to the public

officials' statements following his arrest, the dissemination in the media of various case-file material, including covert recordings, and the allegedly one-sided non-disclosure obligation imposed on him as part of the criminal proceedings.

65. In so far as the statements of public officials are concerned (see paragraphs 16-18 and 22 above), and assuming that the civil-law remedy alone could, based on the criteria established in the Court's case-law (see paragraph 63 above and the references cited therein), provide adequate and sufficient redress to the applicant, the applicant should have pursued those proceedings.

66. However, the Court does not lose sight of the fact that in the present case the submission, at domestic level, concerning the right to be presumed innocent was primarily formulated by the applicant as being closely linked to the alleged breach of the principle of publicity and the operation of the non-disclosure obligation as part of the criminal proceedings against him. In particular, the full closure of the trial considered against the statements made by public officials and the main witness against him and the dissemination of covert material had, in the applicant's submission, contributed to the creation of a public perception that he was guilty (see paragraphs 35 and 49 above).

67. In such circumstances, with the presumption of innocence viewed as a procedural guarantee in the context of a criminal trial itself (see *Allen v. the United Kingdom* [GC], no. 25424/09, § 93, ECHR 2013), it was not unreasonable for the applicant to pursue the matter as part of the criminal proceedings without availing himself of another remedy (see *Batiashvili*, cited above, § 83). By extension, he also complied with the six-month time-limit under Article 35 § 1 of the Convention.

68. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Fairness of the criminal proceedings against the applicant

(a) The parties' submissions

69. The applicant submitted that the criminal proceedings against him had been unfair on account of the manner in which the main piece of evidence had been obtained and his related inability to effectively challenge its use against him. In particular, he claimed that the poisonous substance used as proof of his having "prepared" the murder had been planted in his suitcase. In this regard, he pointed to the domestic courts' refusal to have the security camera footage retrieved from the airport where his luggage had been seized. He also stated that no fingerprint examination had been carried out on the material concerned. These omissions had been crucial, in his view, as in the

absence of the cyanide recovered from his luggage, no other piece of evidence had been sufficient to support his conviction. In this regard, he emphasised that the investigation as regards the question of when, where or how he had allegedly procured the illicit substance had been disjoined from the criminal investigation against him and had never been clarified.

70. The Government submitted that the applicant had been able to challenge the authenticity of the impugned piece of evidence and to oppose its use, and that the domestic courts had provided ample reasoning for dismissing his applications. In particular, the application to obtain the footage from the airport surveillance cameras had been unsubstantiated. By contrast, the domestic courts had relied on witness statements of the airport staff who had attended the seizure of the applicant's luggage to rule out any tampering with evidence. As regards the applicant's arguments regarding the absence of a fingerprint and DNA examination of the package recovered from the suitcase, the domestic courts had held, among other things, that the package had been touched by him and the investigators during the search, rendering any fingerprint and DNA examinations useless. The Government further stated that the impugned evidence had not been the sole or decisive evidence against the applicant. In that regard, the domestic courts had provided extensive reasoning based on the testimony of various witnesses and other evidence as regards his animosity towards the victim, the motives behind preparing her murder and his solicitation of the poison to conclude that he had been plotting to murder her.

(b) The Court's assessment

(i) General principles

71. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Schenk v. Switzerland*, 12 July 1988, § 46, Series A no. 140; *Jalloh v. Germany* [GC], no. 54810/00, §§ 94-96, ECHR 2006-IX; and *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 83, 11 July 2017).

72. There is a distinction to be made between the admissibility of evidence (that is to say the question of which elements of proof may be submitted to the relevant court for its consideration) and the rights of the defence in respect of evidence which in fact has been submitted to the court. There is also a distinction between the latter (that is to say whether the rights of defence have been properly ensured in respect of the evidence taken) and the subsequent assessment of that evidence by the court once the proceedings have been concluded. From the perspective of the rights of the defence, issues under Article 6 may arise in terms of whether the evidence produced for or against the defendant was presented in such a way as to ensure a fair trial (see

Ayetullah Ay v. Turkey, nos. 29084/07 and 1191/08, § 125, 27 October 2020, with further references).

73. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the "unlawfulness" in question and, where a violation of another Convention right is concerned, the nature of the violation found (see *Bykov v. Russia* [GC], no. 4378/02, § 89, 10 March 2009; *Lee Davies v. Belgium*, no. 18704/05, § 41, 28 July 2009; and *Prade v. Germany*, no. 7215/10, § 33, 3 March 2016).

74. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence were respected. It must be established, in particular, whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use (see *Szilagyi v. Romania* (dec.), no. 30164/04, 17 December 2013). In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see, among other authorities, *Bykov*, cited above, § 90; *Lisica v. Croatia*, no. 20100/06, § 49, 25 February 2010; and *Ayetullah Ay*, cited above, § 126). While no problem of fairness necessarily arises where the evidence obtained was unsupported by other material, it may be noted that where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker (see *Lee Davies*, cited above, § 42; *Bykov*, cited above, § 90; and *Bašić v. Croatia*, no. 22251/13, § 48, 25 October 2016). In this connection, it may also be reiterated that the burden of proof is on the prosecution, and any doubt should benefit the accused (see *Ayetullah Ay*, cited above, § 126).

75. When determining whether the proceedings as a whole have been fair, the weight of the public interest in the investigation and punishment of the particular offence in issue may be taken into consideration and be weighed against the individual interest that the evidence against him be gathered lawfully (see *Jalloh*, § 97, and *Prade*, § 35, both cited above).

(ii) Application of these principles to the present case

76. Turning to the circumstances of the present case, the applicant complained that the admission and use of what he considered key evidence against him had rendered the criminal trial unfair. Namely, he argued that the poisonous substance had been planted in his suitcase and that he had been unable to challenge the circumstances in which it had been obtained.

77. As concerns the quality of this item of evidence, the Court notes that the criminal investigation against the applicant was triggered by

incriminating evidence given by I.M., and that the subsequent court-ordered covert investigative measures against the applicant (see paragraphs 5-9 above) served as the basis for the authorities' decision to arrest him and seize his luggage (see paragraphs 10-11 above; see also *Tortladze v. Georgia*, no. 42371/08, § 72, 18 March 2021). Thus, while the seizure of the applicant's luggage was not based on a prior judicial warrant, it was preceded with judicially-ordered covert investigative measures which, according to the trial court, evidenced the need to implement the seizure of the applicant's luggage in urgent circumstances (see paragraph 40 above). This procedure was not, therefore, unlawful (contrast and compare, for instance, *Kobiashvili v. Georgia*, no. 36416/06, §§ 61 and 65, 14 March 2019). Furthermore, I.M. was examined before the domestic courts, with the participation of both the applicant and the lawyers of the applicant's own choosing. Additionally, the circumstances relating to the seizure and subsequent search of the applicant's suitcase were confirmed by an airport security staff member, who was questioned in open court and cross-examined by the defence. He was regarded by the domestic courts as a neutral witness (see paragraphs 11 and 40 above).

78. Furthermore, and as regards the opportunity for the applicant to challenge the authenticity of the evidence and oppose its use, the Court observes that he did not appeal against the judicial decisions declaring the relevant investigative measures lawful (see paragraph 40 above). At any rate, he was able to contest the lawfulness and authenticity of the substance obtained as a result of the impugned seizure and search measure in the course of the criminal proceedings against him. His arguments about the circumstances of the seizure and subsequent search of his luggage and the reliability of the evidence obtained as a result were addressed by the domestic courts and dismissed in reasoned decisions in the course of the criminal trial (see paragraphs 39-40 and 51 above; see also *Tortladze*, cited above, § 73).

79. Against this background, and despite the Public Defender's assessment (see paragraph 45 above), the Court does not consider that the domestic courts' reasoning regarding the application made by the applicant to retrieve the surveillance camera footage from the airport (see paragraph 15 above) was arbitrary or manifestly unreasonable. The domestic courts also addressed the applicant's argument regarding the inability of the criminal investigation to determine when and where he could have obtained the substance found in his suitcase. The courts found the question irrelevant in the circumstances of the case before them (see paragraph 40 above). As regards the lack of a fingerprint and DNA examination of the material recovered from the suitcase, the Court does find it problematic that the search of the applicant's luggage was conducted in a manner which rendered any subsequent expert examinations of the evidence devoid of purpose, as was also partly acknowledged by the domestic courts (see paragraphs 11 and 51 above). In this regard, the Court considers that the relevant officials should

have taken adequate precautions in order to prevent possible contamination of the evidence (see also *Tortladze*, cited above, § 73). Nevertheless, this failure did not, in the circumstances of the current case (see paragraphs 77-78 above), call into question the reliability of the evidence.

80. Additionally, the Court attaches particular weight to the fact that the substance recovered was not the only evidence on which the applicant's conviction was based (see paragraphs 9, 37-41 and 51 above; see also *Bykov*, §§ 96 and 98, and *Tortladze*, § 74, both cited above). In particular, in finding the applicant guilty, the domestic courts relied on incriminating evidence given by I.M., statements of other witnesses, audio and video recordings and computer data which multiple expert examinations confirmed to have been authentic, and other evidence. Considering these circumstances together with the apparent inconsistencies in the applicant's version of the events (see paragraphs 29 and 39 above), it was within the domestic courts' remit to consider whether, overall, sufficiently strong evidence existed to demonstrate that the applicant had been guilty of "preparation of murder."

81. In these circumstances, the Court finds that the proceedings in the applicant's case, considered as a whole, were not contrary to the requirements of a fair trial.

82. There has, accordingly, been no violation of Article 6 § 1 of the Convention in this respect.

2. Alleged breach of the principle of publicity

(a) The parties' submissions

(i) The applicant

83. The applicant claimed that there had been no grounds justifying the full closure of the criminal proceedings. In particular, he had not wished his own personal life to be shielded from the public, and the other personal information contained in the case file had not been such as to warrant the full closure of the trial. At any rate, no details of anyone's private life had been discussed at the hearings or had featured in the judgments.

84. As regards the protection of witnesses, the applicant submitted that the main witnesses in his case had given interviews to journalists and that neither their identities nor their stance regarding the case had been a secret. As to the alleged jeopardy to the investigation against him on account of possible accomplices and to the parallel and disjoined investigation concerning the acquisition of cyanide, he stated that those proceedings could not justify the closure of the proceedings. At any rate, the Chief Prosecutor's Office had not, according to the applicant, shied away from disclosing a number of covert recordings to the press and the public. Nor had they impeded I.M.'s television appearances and statements concerning multiple aspects of the ongoing criminal proceedings.

85. The applicant further stated that the protection of morals and the protection of the reputation of religious figures had not been grounds for closing the proceedings under domestic law. Furthermore, the approach of the domestic authorities had effectively created special treatment for religious figures as a group, warranting the application of the law in a manner favourable to them, in breach of the requirement of openness under Article 6 § 1 of the Convention and the principle of the rule of law.

86. As regards the argument that certain witnesses in the applicant's case had been threatened, the applicant argued that the ground had been generic and must have implied I.M., who had had an argument over the telephone with one of applicant's friends regarding his appearances and statements on television. Again, the witness mentioned had been widely known and considering that he had himself unrestrictedly talked in public about virtually all aspects of the case, he would have been in no further danger by testifying on the same matters at the hearing. Furthermore, the applicant submitted that the prosecutors had argued before the appellate court that one of his lawyers had received threats, but that the same lawyers had applied to have the proceedings held in public.

87. The applicant stated that the domestic courts had failed to justify why less restrictive measures, such as a partial closure of the trial, would not have been possible. He also stated that it had been important for him "to disprove" the prosecuting authorities' version of events in the light of the statements made by public officials regarding his case, the dissemination of certain material from the criminal case file and the alleged breach of his right to be presumed innocent. The restrictions on his rights under Article 6 of the Convention could not, in his submission, have been counterbalanced by the monitoring of the judicial proceedings by the Public Defender of Georgia, as he had been heavily criticised by the authorities in terms of his competence.

(ii) The Government

88. The Government submitted that the domestic courts' decision to hold the trial in camera had had a legal basis, had been duly reasoned and had not affected the applicant's rights under Article 6 of the Convention to a significant degree. In particular, they argued that the case-file material and submissions made as part of the domestic proceedings had shown the applicant and other religious figures "in a light that [was] categorically unacceptable for religious figures." The evidence had also had the potential to reveal the applicant's and other individuals' personal details and information regarding the personal life of other individuals, including some capable of discrediting particular religious figures. It was submitted that given the publicity generated by the applicant's case, the dissemination of such information had been capable of "altering public opinion with respect to the moral standards maintained by religious figures and discrediting the church and the Patriarchate as institutions." In the Government's submission,

the notion of "morals" should, in view of the Court's relevant case-law, be interpreted with the realities of a particular society in mind, which is what the domestic courts had done.

89. Additionally, the authorities had believed that the interests of justice, namely preventing the potential risk of exposing information and suspicions against other individuals potentially involved as possible accomplices of the applicant had also justified the closing of the trial. In the Government's view, this element had been the decisive factor for imposing the non-disclosure obligation on the applicant, the victim and all witnesses. Additionally, the prosecuting authority had considered that the protection of witnesses in the applicant's case had necessitated the closure of the trial.

90. As regards the possible existence of less restrictive measures compared to the full closure of the trial, the Government submitted that a partial closure of the trial would not have been effective. They submitted, among other things, that the separation of the witness examinations from the demonstration, in court, of the covert recordings and the material retrieved from the applicant's electronic devices would have been impossible as most of the witnesses were confronted with the latter items of evidence. The limitation was counterbalanced, in the Government's submission, by the fact that the applicant and his lawyers had had unlimited access to the proceedings and the relevant evidence, and that the proceedings had been attended and monitored by the Public Defender of Georgia. They also submitted that certain witnesses had been threatened and had needed protection. Lastly, the operative parts of the judgments delivered in the applicant's case had been pronounced publicly.

(b) The Court's assessment

(i) General principles

91. The public character of proceedings before the judicial bodies referred to in Article 6 § 1 protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see *Sutter v. Switzerland*, 22 February 1984, § 26, Series A no. 74, and *Riepan v. Austria*, no. 35115/97, § 27, ECHR 2000-XII).

92. Whilst the member States of the Council of Europe all subscribe to this principle of publicity, their legislative systems and judicial practice reveal some diversity as to its scope and manner of implementation, as regards both the holding of hearings and the "pronouncement" of judgments. The formal aspect of the matter is, however, of secondary importance as compared with the purpose underlying the publicity required by Article 6 § 1.

The prominent place held in a democratic society by the right to a fair trial impels the Court, for the purposes of the review which it has to undertake in this area, to examine the realities of the procedure in question (see *Sutter*, cited above, § 27).

93. Article 6 § 1 does not, however, prohibit courts from deciding, in the light of the special features of the case submitted to them, to derogate from this principle: in accordance with the actual wording of this provision, "... the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice"; holding proceedings, whether wholly or partly, in camera, must be strictly required by the circumstances of the case (see, *Diennet v. France*, 26 September 1995, § 34, Series A no. 325-A; *Martinie v. France* [GC], no. 58675/00, § 40, ECHR 2006; and *Welke and Białek v. Poland*, no. 15924/05, § 74, 1 March 2011).

(ii) Application of these principles to the present case

94. At the outset, the Court observes that from the early stages of the criminal proceedings against the applicant, a non-disclosure obligation was imposed on him, the victim and the witnesses. Subsequently, the domestic courts decided, based on the prosecutor's application to that effect, to hold the criminal proceedings in camera. Judicial decisions regarding the full closure of the trial were based on the following grounds: the alleged presence of information regarding the personal lives of various individuals in the case file and the protection of their rights under Article 8 of the Convention, the protection of the religious and moral principles established in society, the protection of witnesses and the prevention of the risk of prejudice to the ongoing criminal investigation on various issues regarding the incident (see paragraphs 36, 42 and 50 above).

95. In the present case, it is noteworthy that the domestic courts deliberated on the closure of the proceedings as part of open proceedings and that the applicant was able to fully participate in the trial, including the procedure which led to the making of the in camera orders (see paragraphs 35, 36, 42, and 50 above; see also *Yam v. the United Kingdom*, no. 31295/11, §§ 59 and 61, 16 January 2020).

96. The Court takes note of the applicant's argument that not all the grounds on which the domestic courts based their decisions to close the proceedings to the public were expressly provided for in domestic law. In particular, the protection of religious and moral principles in society and those of the interests of justice were not listed in Article 182 of the Code of Criminal Procedure as possible grounds for holding the trial in camera (see paragraph 54 above). However, that provision afforded a certain degree of

discretion to the courts when considering whether to close the trial "to keep order" (see paragraph 54 above). At any rate, the Court reiterates that Article 6 § 1 does not prevent the courts from deciding, in the light of the special features of the case submitted to them, to derogate from the principle of publicity (see *Welke and Białek*, cited above, § 74). Indeed, the provision in question expressly states that the public may be excluded from all or part of the trial in the interests of morals, or in special circumstances where publicity would prejudice the interests of justice. It cannot therefore be said that the domestic courts' relevant decisions were devoid of lawful grounds.

97. In that context, the Court cannot accept the apparent implication in the domestic courts' reasoning and the Government's related submissions that "the religious and moral principles established in society" (see paragraph 42 above) could take precedence in the balancing of the various rights protected under the Convention and the Constitution of Georgia. However, the relevant decisions to hold the proceedings in camera were not based on these reasons alone and referred to the protection of the rights of various individuals under Article 8 of the Convention, the protection of witnesses, and the prevention of a risk of prejudice to the ongoing criminal investigation on various issues regarding the incident (see paragraphs 36, 42 and 50 above).

98. Without going into a detailed assessment of each ground and even assuming that those reasons, taken cumulatively, justified the derogation from the principle of publicity under Article 6 § 1 of the Convention in the present case, the Court will assess whether the domestic courts duly considered the possibility of applying less restrictive measures. In this regard, the appellate court reasoned why, owing to the specific nature of appellate proceedings, it had been impossible to open the hearings in part (see paragraph 50 above). By contrast, the trial court did not explain why it had not been feasible to close the trial in part, instead of holding the applicant's entire trial in camera (see paragraphs 36 and 42 above). The Court reiterates, however, that in reaching the relevant decisions the courts must comply with the requirement of strict necessity (see paragraph 93 above; and compare, for instance, *Belashev v. Russia*, no. 28617/03, § 83, 4 December 2008, and *Yam*, cited above, § 54).

99. While the question relating to the alleged violation of a defendant's right to a public hearing *vis-à-vis* the exclusion of the public and the press does not necessarily correlate with the existence of any actual damage to the defendant's exercise of his other procedural rights (see *Kilin v. Russia*, no. 10271/12, § 111, 11 May 2021), the Court finds the trial court's approach (see the previous paragraph) problematic, not least because in his pleadings during the trial the applicant complained of the non-disclosure obligation imposed on him and of a breach of his right to be presumed innocent directly in connection with the holding of the criminal trial in camera and in support of his request to open the trial to the public at least in part (see paragraph 35 above). In particular, the non-disclosure obligation imposed on the applicant

barred him from publicly commenting on the case against him. By contrast, the prosecuting authorities made various statements regarding the case and publicly disseminated parts of the case file material (see paragraphs 16-17, 22 and 27 above). Additionally, the main witness freely gave interviews to the media and made accusatory statements regarding the applicant (see paragraphs 24-25 and 28 above). The Court additionally notes the undisputed existence of heightened public interest in respect of the case against the applicant. Therefore, the applicant's argument regarding the possibility of only partly closing the trial required an explicit, reasoned reply. The trial court's brief explanation that the defence had publicly commented on the trial despite the operation of the non-disclosure obligation and that the court would not be influenced by statements made outside of the courtroom (see paragraph 43 above) did not sufficiently address the core of the applicant's argument regarding the possibility of applying less restrictive measures and the impact of the full closure of the trial on his rights under Article 6 § 2 of the Convention in the specific circumstances pertaining to his case.

100. The Court now turns to the question of whether the closure of the trial was sufficiently counterbalanced, as suggested by the Government, by the fact that the Public Defender's Office was allowed to monitor it. In this regard, the Court finds it important to note that in his report the Public Defender himself criticised the decision to close the hearings and the fact that the possibility of closing the trial in part had not been pursued (see paragraph 45 above). Furthermore, the Court cannot overlook the fact that his findings were met with criticism by the CPO and the trial court, which held that his report relating to the applicant's trial (see paragraph 45 above) had aimed to "misinform" the public (see paragraphs 46-47 above). This could not have contributed to alleviating the detrimental effect that the decision to hold the trial in camera may have had, in the circumstances, on public confidence in the proper administration of justice.

101. Lastly, the appeal hearing was also held in camera. As for the Supreme Court, its decision was adopted by means of written proceedings. It therefore follows that the appeal proceedings did not remedy the failure of the Tbilisi City Court to attempt to confine the measure to what was strictly necessary in order to attain the objectives pursued.

102. Having regard to these considerations, the Court concludes that there has been a violation of Article 6 § 1 of the Convention.

3. The applicant's right to the presumption of innocence

(a) The parties' submissions

103. The applicant submitted that the actions and statements of the domestic authorities had breached his right to be presumed innocent until proven guilty. In particular, in circumstances where a non-disclosure obligation had been imposed on him and the criminal proceedings had been

closed to the public despite his requests to open them, various public officials and the prosecutors had been free not only to make various statements concerning the developments in the criminal case but also to circulate in the media selected excerpts from the criminal file, including covert recordings implicating him in the crime with which he had been charged. Similarly, the main witness for the prosecution had freely given interviews incriminating him, while the applicant himself had had to abide by the non-disclosure obligation. These circumstances had, in the applicant's submission, contributed to his being portrayed as guilty.

104. The Government stated that there had been no violation of the applicant's right to be presumed innocent on account of the statements made by the public officials following his arrest, the dissemination in the media of certain case-file material and/or the operation of the non-disclosure obligation. In particular, the statements had merely described, in general terms, the alleged crime with the aim of informing the public regarding the progress relating to the applicant's case. They had not accused the applicant of having committed any crime. The Government submitted, in this regard, that the applicant and his lawyers had, despite the non-disclosure obligation, made certain statements to the media protesting the applicant's innocence and providing some information regarding the criminal proceedings. As regards the dissemination of certain materials by the prosecuting authorities, the Government noted that this had served the purpose informing the public in view of the fact that the applicant's case had attracted heightened public interest. By contrast, the applicant had also distributed, on 13 February 2017, a letter alleging corruption in the Church (see paragraph 19 above). By doing this, the applicant had himself contributed to attracting public attention to his case.

(b) The Court's assessment

(i) General principles

105. The Court reiterates that the presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of a fair trial that is required by paragraph 1. The presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty. A premature expression of such an opinion by the tribunal itself will inevitably run foul of the said presumption (see, among other authorities, *Deweer v. Belgium*, 27 February 1980, § 56, Series A no. 35; *Minelli v. Switzerland*, 25 March 1983, §§ 27, 30 and 37, Series A no. 62; *Allenet de Ribemont v. France*, 10 February 1995, §§ 35-36, Series A

no. 308; *Daktaras v. Lithuania*, no. 42095/98, §§ 41-44, ECHR 2000 X; and *Matijašević v. Serbia*, no. 23037/04, § 45, ECHR 2006).

106. Furthermore, a distinction should be made between statements which reflect the opinion that the person concerned is guilty and statements which merely describe "a state of suspicion". The former infringe the presumption of innocence, whereas the latter have been regarded as unobjectionable in various situations examined by the Court (see, *inter alia*, *Lutz v. Germany*, 25 August 1987, § 62, Series A no. 123, and *Leutscher v. the Netherlands*, 26 March 1996, § 31, *Reports* 1996-II).

107. Article 6 § 2 governs criminal proceedings in their entirety, "irrespective of the outcome of the prosecution" (see *Minelli*, cited above, § 30). However, once an accused has been found guilty, in principle, it ceases to apply in respect of any allegations made during the subsequent sentencing procedure (see *Phillips v. the United Kingdom*, no. 41087/98, § 35, ECHR 2001-VII).

108. The freedom of expression, guaranteed by Article 10 of the Convention, includes the freedom to receive and impart information. Article 6 § 2 cannot therefore prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (see *Allenet de Ribemont*, cited above, § 38).

109. The Court has considered that in a democratic society it is inevitable that information is imparted when a serious charge of misconduct in office is brought (see *Arrigo and Vella v. Malta* (dec.), no. 6569/04, 10 May 2005). It has acknowledged that in cases where an applicant was an important political figure at the time of the alleged offence the highest State officials, including the Prosecutor General, were required to keep the public informed of the alleged offence and the ensuing criminal proceedings. However, this circumstance could not justify any use of words chosen by the officials in their interviews with the press (see *Butkevičius v. Lithuania*, no. 48297/99, § 50, ECHR 2002-II (extracts)). The Court has emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence. Nevertheless, whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see, *inter alia*, *Adolf v. Austria*, 26 March 1982, §§ 36-41, Series A no. 49, and *Daktaras*, cited above, § 41). In any event, the opinions expressed cannot amount to declarations by a public official of the applicant's guilt which would encourage the public to believe him or her guilty and prejudge the assessment of the facts by the competent judicial authority (see *Butkevičius*, cited above, § 53, and *Garycki v. Poland*, no. 14348/02, § 70, 6 February 2007).

(ii) Application of these principles to the present case

110. The Court observes that the applicant, at the time an archpriest and the director of a medical clinic operating under the authority of the Georgian Orthodox Church, was arrested on suspicion of preparing to murder someone who also worked for the Church. It was inevitable that the criminal case against him would attract heightened public interest and wide media coverage (see, *mutatis mutandis*, *Viorel Burzo v. Romania*, nos. 75109/01 and 12639/02, § 160, 30 June 2009). In this regard, the Court takes note of the Government's argument regarding the legitimate public interest of society in being informed of the alleged offence and the relevant criminal proceedings (see paragraph 104 above; see also *Paulikas v. Lithuania,* no. 57435/09, §§ 50 and 60, 24 January 2017).

111. Against this background, multiple public statements were made immediately following the applicant's arrest (see paragraphs 16-18 above). Some of these statements – such as those made by the Prime Minister and the Minister of Justice – did not explicitly claim that the applicant had committed a crime. Therefore, they did not necessarily amount to a breach of his right to be presumed innocent (see *Konstas*, cited above, § 41). By contrast, the statement by the Vice Prime Minister was more explicit (see paragraph 18 above). Additionally, the prosecuting authorities stated that the "evidence collected" by them had revealed that the applicant "had been preparing the murder of one of the individuals and had, for this very purpose, purchased the poisonous substance" (see paragraph 16 above). The Court would be prepared to accept that the statement in question informed the public that the prosecuting authorities had in their possession sufficient material to charge the applicant (compare paragraphs 12 and 16 above; see also *Butkevičius*, cited above, § 52). However, the authorities also claimed that if "[that substance] had been used, the criminal intent of the accused would have been implemented and the lethal result would have been unavoidable" (see paragraph 16 above), going somewhat beyond the purpose of merely informing the public of the charge against the applicant.

112. More importantly, the initial statements were followed up by the prosecuting authorities' dissemination of material relating to the criminal case against the applicant. While his case did attract heightened public attention requiring the investigating and prosecuting authorities to inform the public of the developments in his case, as also requested by the Public Defender (see paragraph 21 above), the prosecuting authorities disseminated case-file material showing, among other things, his apparent solicitation of cyanide together with a statement that the evidence "established" that he had sought to obtain information regarding the poison "for the purposes of murdering" the victim (see paragraph 27 above) – actions and statements going beyond the discretion and circumspection necessary for respecting the applicant's presumption of innocence.

113. Additionally, as indicated previously (see paragraph 99 above), a non-disclosure obligation was imposed on the applicant and the main witness against him. Yet, it does not appear that the prosecuting authorities attempted to enforce the non-disclosure obligation in respect of the latter, enabling the witness to make public accusations against the applicant while discussing various factual circumstances relating to the criminal case against him.

114. The Court considers that these elements, taken cumulatively, could not but have encouraged the public to believe that the applicant was guilty before he had been proved guilty according to law, especially during the proceedings at the court of first instance, before the trial court reached its verdict (compare and contrast, for instance, *Konstas*, cited above, § 34). The detrimental impact of these circumstances on the applicant's right to the presumption of innocence could not be offset by some statements made by the applicant and his lawyers, in apparent defiance of the non-disclosure obligation (and who were later summoned to the CPO for questioning about that), or the opportunity, as per domestic law, to request a waiver to that obligation which, in any event, was rejected by the relevant authorities (see paragraphs 26 and 31 above).

115. In the light of the foregoing considerations, the Court finds that there has been a breach of Article 6 § 2 of the Convention in the particular circumstances pertaining to the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

116. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

117. The applicant claimed 376,304 Georgian laris (GEL) in respect of pecuniary damage for loss of income, and 150,000 euros (EUR) in respect of non-pecuniary damage.

118. The Government claimed that there was no link between the alleged violations under the Convention and the claim relating to pecuniary damage. As regards non-pecuniary damage, they submitted that the applicant's claim was excessive and that the finding of a violation would suffice.

119. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim.

120. As regards non-pecuniary damage, the Court considers that, in the circumstances of the present case, the finding of a violation constitutes in itself sufficient just satisfaction.

B. Costs and expenses

121. The applicant also claimed GEL 6,360 in respect of his legal representation before the Court and GEL 3,058 for related costs and expenses, such as translation fees and postal costs. He submitted a contract with his lawyer and proof of payment of all the costs and expenses claimed.

122. The Government did not comment.

123. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award GEL 9,418 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the manner in which the evidence was obtained and used against the applicant;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the holding of the criminal trial in camera;

4. *Holds* that there has been a violation of Article 6 § 2 of the Convention;

5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, GEL 9,418 (nine thousand four hundred and eighteen Georgian laris), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Síofra O'Leary President